

APPEAL NO. 032262
FILED OCTOBER 15, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on July 24, 2003. The hearing officer decided that appellant (claimant) made a knowing election to pursue a remedy and recover workers' compensation benefits in another state. Claimant appealed, contending that he did not willingly apply for benefits in another state. Respondent (carrier) asserts that claimant has submitted an untimely appeal and otherwise urges affirmance of the hearing officer's decision.

DECISION

Claimant's appeal not having been timely filed, the decision and order of the hearing officer have become final pursuant to Section 410.169.

Records of the Texas Workers' Compensation Commission (Commission) show that the hearing officer's decision was mailed to the parties on August 1, 2003. Claimant acknowledged receiving the hearing officer's decision on August 5, 2003. Pursuant to Section 410.202 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (Rule 143.3(c)), an appeal is presumed to be timely if it is mailed not later than the 15th day after the date of receipt of the hearing officer's decision and received by the Commission not later than the 20th day after the date of receipt of the hearing officer's decision. Section 410.202(d) was amended effective June 17, 2001, to exclude Saturdays, Sundays, and holidays listed in Section 662.003 of the Texas Government Code from the computation of time in which to file an appeal. An appeal submitted by fax is deemed to have been sent on the day it is received. Rule 102.5(f)(1). Under the amended provision, 15 days from the claimant's actual receipt of the hearing officer's decision would have been August 26, 2003. Claimant faxed his request for review on August 26, 2003, at 9:30 p.m., and it was faxed again the next day. Claimant's appeal is file stamped as having been received by the Commission on August 27, 2003. Rule 102.3(e) states that "[u]nless otherwise specified by rule, any written or telephonic communications required to be filed by specified time will be considered timely only if received prior to the end of normal business hours on the last permissible day of filing." Rule 102.3(d) provides that "[a]ny written or telephonic communications received other than during normal business hours on working days are considered received at the beginning of normal business hours on the next working day." Finally, Rule 102.3(c) establishes that "[n]ormal business hours in the Texas Workers' compensation system are 8:00 a.m. to 5:00 p.m. Central Standard Time with the exception of the Commission's El Paso field office whose normal business hours are 8:00 a.m. to 5:00 p.m. Mountain Standard Time." Claimant's appeal was filed on August 27, 2003, one day late and thus was untimely. See Texas Workers' Compensation Commission Appeal No. 022118, decided October 7, 2002.

The appeal being untimely, the jurisdiction of the Appeals Panel was not properly invoked and the decision and order of the hearing officer has become final under Section 410.169.

The true corporate name of the insurance carrier is **PACIFIC EMPLOYERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**ROBIN M. MOUNTAIN
6600 CAMPUS CIRCLE DRIVE EAST, SUITE 300
IRVING, TEXAS 75063.**

Judy L. S. Barnes
Appeals Judge

CONCUR:

Margaret L. Turner
Appeals Judge

Edward Vilano
Appeals Judge